

COMPARISON of TABOR(LD 2075) and CURRENT LAW

Procedural issues: LD 2075, An Act To Create the Taxpayer Bill of Rights, is a citizen-initiated bill pursuant to Article IV, Part 3, Section 18 of the Maine Constitution. The initiative petitions were submitted to the Secretary of State on October 21 and 24, 2006. The Secretary of State determined that sufficient signatures had been obtained and submitted the petition to the Legislature. LD 2075 was printed on March 16, 2006 and referred to the Joint Standing Committee on Taxation which held a public hearing on the bill March 30, 2006. On April 3, 2006 the Superior Court ruled that the petitions submitted on October 24th were too late to be valid under 21-A MRSA §903-A which provides that petitions are invalid unless submitted within one year of the date of issuance. On May 4, 2006, the decision of the Superior Court was unanimously overturned by the Maine Supreme Judicial Court. The majority opinion of the Court ruled that the one-year requirement in Title 21-A, section 903-A was inconsistent with submission deadlines established in the Maine Constitution and affirmed the decision of the Secretary of State that the petition had sufficient signatures to move forward.

Context: LD 2075 was drafted and the legislation approved for circulation before the enactment of LD 1 spending limitations in January 2005 and other changes in budget procedures. Many sections of law addressed in LD 2075 have, in the intervening time period since the legislation was originally drafted, been amended or repealed. Many sections of LD 2075 would be in conflict with existing procedures and requirements adopted in LD 1.

1. STATE GOVERNMENT SPENDING LIMITATIONS

(LD 2075 also applies to quasi-governmental agencies and Other Special Revenue Funds)

	Current Law	LD 2075
Application of spending limitation	<u>Application:</u> 5 MRSA §1534.1-2 Applies to total GF appropriations (except additional EPS funding until state share of EPS costs reaches 55%)	<u>Application:</u> 5 MRSA §2044 Applies to fiscal year spending <ol style="list-style-type: none"> 1. General Fund 2. Highway Fund 3. Quasi-governmental agencies 4. Other Special Revenue funds
Limitation formula	<u>Growth limitation factor :</u> 5 MRSA §1534.1-2 Biennial base year appropriation multiplied by one plus: 1. For fiscal years when state and local <u>tax burden rank in highest 1/3</u> of states: <u>Average real personal income growth</u> (but not more than 2.75%) plus <u>average population growth</u> 2. For fiscal years when state and local <u>tax burden is in the middle 1/3</u> of states: <u>Average real personal income growth</u> plus <u>forecasted inflation</u> plus <u>average population growth</u>	<u>Expenditure limitation is :</u> 5 MRSA §2044.1 1. State fiscal year spending multiplied by: <u>Inflation adjustment factor</u> (increase in CPI for the most recent calendar year) plus <u>Population adjustment factor</u> (increase or decrease in population for the preceding calendar year as determined by SPO based on census) AND Any revenue increases approved by a 2/3 vote of each House of the Legislature and approved by the voters

	Current Law	LD 2075
Base from which limitation is calculated	Prior year's limitation 5 MRSA §1534.1	Prior year's spending 5 MRSA §2044.2
Amounts excluded from limitation calculation	5 MRSA §1534.1 Additional EPS/GPA appropriation over FY 05 appropriation (until state share of EPS equals 55%)	<u>Excluded from limitation calculation:</u> 5 MRSA §2044.3 <ol style="list-style-type: none"> 1. Amounts returned to taxpayers as refunds of excess revenues 2. Amounts received from Federal Government 3. Amounts collected on behalf of another level of government 4. Pension contributions by employees and pension fund earnings 5. Pension and disability payments made to former gov't employees 6. Amounts received as gifts, grants or donations that must be spent for specified purposes 7. Amounts paid pursuant to a court award; 8. Reserve transfers or expenditures
Exceeding budget limitations	5 MRSA §1534.3 <ol style="list-style-type: none"> 1. <u>Exceeding appropriation limitation (temporary increase):</u> Limit may be exceeded by additional costs or the lost federal revenue from the following extraordinary circumstances: <ol style="list-style-type: none"> A. Catastrophic events; B. Unfunded or underfunded state or federal mandates C. Citizens' initiatives or other referenda D. Court orders or decrees E. Loss of federal funding Extraordinary circumstances" must be outside the control of the Legislature. "Extraordinary circumstances" do not include changes in economic conditions, revenue shortfalls, increases in salaries or benefits, to new programs or program operations. Accomplished by vote of both Houses of the Legislature in a separate measure that identifies the extraordinary circumstances and the intent to exceed the limit. 	

	Current Law	LD 2075
	<p>2. <u>Increase in appropriation limitation (permanent increase):</u> Purposes not limited.</p> <p>Accomplished by vote of both Houses of the Legislature in a separate measure that identifies the extraordinary circumstances and the intent to exceed the limit.</p>	<p><u>Exceeding expenditure limitation:</u> 5 MRSA §2044.4 Additional expenditures may be authorized if approved by the same process as for increase in revenue: A. a 2/3 vote of each House of the Legislature And B. approval of a majority of the voters.</p>
State budget process limits ¹	<p>1. Agency budget requests to Governor : 5 MRSA §1665.1</p> <p>Departments and agencies submit expenditure and appropriations requirements to SBO for ensuing biennium in the manner prescribed by the SBO.</p> <p>Highway Fund requests (except highway and bridge improvement accounts) may not exceed the HF appropriation [sic] for previous fiscal year plus average real personal income growth rate (10 prior calendar years average growth (BEA) less CPI) or 2.75%, whichever is less.</p>	<p>1. Agency budget requests to Governor: 5MRSA §1665.1</p> <p>Departments submit to SBO requirements for ensuing biennium for current services authorized by law. GF appropriation requests may not exceed the GF appropriation for previous fiscal year multiplied by one plus the inflation adjustment factor (increase in CPI for the most recent calendar year)</p> <p>No requirement specified for Highway Fund or other funds.</p>
.	<p>2. Governor's GF budget requests to Legislature: 5 MRSA §1664</p> <p>Governor's GF budget request is limited by GF appropriation growth limitation.</p>	<p>2. Governor's GF budget requests to Legislature: 5 MRSA §1664</p> <p>Governor's GF budget request – increase may not exceed the GF appropriation for the previous year multiplied by one plus.</p> <p>1. Inflation adjustment factor (increase in CPI for the most recent calendar year) plus 2. Population adjustment factor (increase or decrease in population for the preceding calendar year as determined by SPO based on census)</p>

¹ PL 2005, c. 601 changes the process and format for presentation of the Governor's budget to the Legislature. Instead of separate bills to fund "current services" and "new and expanded programs," the intent of the new process, beginning with the 2008-09 biennial budget, is that the starting point for the biennial budget will be a modified flat-funded model that starts from authorized positions and flat-funded nonpersonal services appropriations and allocations with incremental adjustments for inflation, new and expanded functions or other recommended changes identified.

	Current Law	LD 2075
Quasi-governmental agencies and other special revenue funds		<p>5 MRSA §2047</p> <p>Must report annually to Legislature identifying revenues received in the preceding fiscal year that exceed the expenditure limitation and proposing a plan for refunding the amount that exceeds 10% of the previous year's expenditure.</p>
Budget emergency	<p>Budget emergency 5 MRSA §1533</p> <p>Retains curtailment process 5 MRSA §1668</p> <p>Provides that if Legislature has adjourned sine die and Commissioner of DAFS declares that GF resources are insufficient to meet GF appropriations the Governor may reduce the MBSF below 1% to bring budget back into balance.</p>	<p>Budget emergency 5 MRSA §1668</p> <p>Retains curtailment process</p>
	<p>Enforcement of limitation: Statutory limits are not legally binding on the Legislature. A constitutional amendment would be necessary to legally bind the Legislature.</p>	<p>Enforcement of limitation: Statutory limits are not legally binding on the Legislature. A constitutional amendment would be necessary to legally bind the Legislature.</p> <p>No specific sanctions provided.</p> <p>5 MRSA §2049.2</p> <p>Individual or class action lawsuits may be brought to enforce the limits. Successful plaintiffs are allowed costs and attorney's fees. Revenue collected improperly must be returned for 4 fiscal years before suit is filed with 10% annual interest.</p>

2. STATE TRANSFERS AND RESERVES:

	Current Law	LD 2075
Maine Budget Stabilization Fund ²	<div>1. <u>Year end Transfers:</u> 5 MRSA c. 142; §1535</div> <div>Year-end <u>excess GF revenue over accepted estimates</u> <u>(in following order of priorities)</u></div> <div><div>State Contingent Acct up to \$350,000</div><div>Loan Insurance Reserve up to \$1,000,000</div><div>to MBSF 35%</div><div>to Retirement Allowance Fund 20%</div><div>to Working Capital Reserve 20%</div><div>Retiree Health Int Serv Fund 15%</div><div>Cap Const. & Imp Res. Fund 10%</div></div> <div>2. <u>Cap on Fund:</u> 5 MRSA §1532.1</div> <div>Maximum -- 12% of GF revenues in prior FY Minimum – 1% of GF revenue in prior FY</div> <div>3. <u>Expenditures from fund:</u> 5 MRSA §1532.2</div> <div>May be spent only to offset a GF revenue shortfall (the amount by which the GF appropriation limitation exceeds forecasted GF revenues and other available resources).</div>	<div>1. <u>Year-end Transfers:</u> 5 MRSA §2045.2.B</div> <div><u>Year end unappropriated surplus</u> To MBSF 20% of year-end unappropriated surplus</div> <div><div>State Contingent Acct repealed</div><div>Loan Insurance Reserve repealed</div><div>Retirement Allowance Fund transfer repealed</div><div>Working Capital Reserve repealed</div></div> <div>2. <u>Cap on Fund:</u> 5 MRSA §1522.2</div> <div>Maximum -- 10% of GF revenues in prior FY</div> <div>3. <u>Expenditures from fund:</u> 5 MRSA §1522.3</div> <div>May be used only to fund the costs of State Government up to the expenditure limit in years when revenues are less than that amount.</div>
Maine Highway Budget Stabilization Fund		<div>1. <u>Transfers to the Fund</u> 5MRSA §1523.2</div> <div>20% of year-end unallocated surplus</div>

² PL 2005, c. 2 repealed the Maine Rainy Day Fund and replaced it with the Maine Budget Stabilization Fund (5 MRSA §1532). TABOR (drafted before PL 2005, c. 2) also proposes to replace the former Rainy Day Fund with a Maine Budget Stabilization Fund.; however, the TABOR proposed fund differs from the PL 2005, c. 2 version currently in effect.

	Current Law	LD 2075
		<p>2. <u>Cap on Fund:</u> 5 MRSA §1523.2</p> <p>Maximum -- 10% of HF revenues in prior FY</p>
		<p>3. <u>Expenditures from fund:</u> 5 MRSA §1523.3</p> <p>May be used only to fund the costs of the Highway Fund budget up to the expenditure limit in years when revenues are less than that amount.</p>
Tax Relief Fund	<p>1. <u>Tax Relief Fund for Maine Residents</u> 5 MRSA §1518-A.1 Funded by transfer of amounts that would otherwise go to the MBSF when the MBSF is at its cap.</p> <p>2. <u>Use of Fund</u> 5 MRSA §1518-A.1 Must be used to provide tax relief for Maine residents.</p>	<p>1. <u>Tax Reserve Relief Fund</u> 5 MRSA §2045.2 Funded by transfer of 80% of year-end GF unappropriated surplus</p> <p>2. <u>Use of the Fund</u> 5 MRSA §2045.4-5 If amount in Fund exceeds \$25,000,000, Legislature must refund the amounts in the Fund to taxpayers. If Legislature does not act, State Tax Assessor calculates a refund to individual income taxpayers based on the number of exemptions claimed on the prior year's income tax return.</p>
Highway Fund Reserve Fund		<p>1. <u>Highway Fund Reserve Fund</u> 5 MRSA §2046.2 Funded by 80% of year end HF unallocated surplus</p> <p>2. <u>Use of Fund</u> 5 MRSA §2046.4 If amount in Fund exceeds 10% of previous year's HF expenditures, there is proportional reduction in motor fuel taxes effective on the following 1/1 for one calendar year.</p>

GOVERNMENT SPENDING/TAX LIMITS

3. MUNICIPAL AND PLANTATION LIMITS

	Current Law (Municipalities only)	LD 2075 (Local districts includes municipalities, counties and school units and any other substate governmental entity with the authority to collect revenue ³)
Appropriation limit ³	<p>1. <u>Statement of limit:</u> 30-A MRSA §5721-A Appropriations that use revenues collected through the property tax may not exceed the “property tax levy limit.”</p> <p>The property tax levy limit equals the property tax levy limit for the previous year multiplied by one plus: the income growth factor plus the property growth factor.</p> <p>When the state and local tax burden is in the top 1/3 of all states, the income growth factor is the average real personal income growth rate but no more than 2.75%.</p> <p>When the state and local tax burden is in the middle 1/3 of all states, the income growth factor is the average real personal income growth plus forecasted inflation.</p>	<p>1. <u>Statement of limit:</u> 5 MRSA §2044.2 <u>Local district (other than school units)</u> spending may not exceed the amount of revenue for the previous year adjusted by:</p> <p>A. the <u>lower of</u> Change in the assessed value of taxable property in the district Or The inflation adjustment factor plus the population adjustment factor Plus B. <u>Additional spending approved</u> by 2/3 of legislative body of the local district and majority of voters</p>
	<p><u>Schools:</u> Growth in total statewide cost of components of Essential Programs and Services (EPS) may not exceed 20-A MRSA §15671.1 1. For fiscal years when state and local <u>tax burden rank in highest 1/3</u> of states: <u>Average real personal income growth</u> (but not more than 2.75%) 2. For fiscal years when state and local <u>tax burden is in the middle 1/3</u> of states: <u>Average real personal income growth</u></p> <p>SAUs: 20-A MRSA §15671-A.5</p>	<p><u>School units:</u> 5 MRSA §2044.2 Spending may not exceed the previous year adjusted by A. the inflation adjustment factor plus change in enrollment Plus B. <u>Additional spending approved</u> by 2/3 of legislative body of the local district and majority of voters</p>

³ LD 2075 does not propose any limitation on spending/property taxes for “municipal” services in the unorganized territory (UT). PL 2005, c. 624 enacted in 2006 establishes a system for limitation and override of the “municipal cost component” budget/property tax for the UT..

	Current Law (Municipalities only)	LD 2075 (Local districts includes municipalities, counties and school units and any other substate governmental entity with the authority to collect revenue)
	may not exceed maximum state and local spending target without approval of body that makes school budget decisions.	
Factors in formula	<p>2. <u>Definition of factors:</u> 30-A MRSA §5721-A.1</p> <p>“Average real personal income growth” means the average percent change in personal income in the State for the prior 10 years less CPI.</p> <p>The “property growth factor” equals the increase in assessed value of property first subject to taxation in the prior year, etc divided by the total valuation of the municipality.</p>	<p>2. <u>Definition of factors</u></p> <p><u>Inflation adjustment factor</u> means the CPI for most recent calendar year determined by federal Bureau of Labor Statistics.</p> <p><u>Population adjustment factor</u> means the increase or decrease in population for the preceding calendar year as determined by SPO based on census</p>
Adjustments to limitation	<p>3. <u>Adjustments to limitation:</u></p> <p>A. Municipality may request adjustment from State Tax Assessor if prior year’s tax commitment reflects “extraordinary, nonrecurring events” (undefined). 30-A MRSA §5721-A.2.C</p> <p>B. Municipality must lower its property tax levy limit by amount of net new state funding other than mandates funding) 30-A MRSA §5721-A.4</p> <p>“Net new funding means: the amount received from state for services funded by property taxes less the amount received in the prior year multiplied by (one plus the income growth factor plus property growth factor)</p>	
Exceptions to limitation	<p>4. <u>Exceptions to limitation:</u></p> <p>1. By vote of legislative body the property tax levy limit may be exceeded as necessary to comply with a court order or to respond to an extraordinary event. 30-A MRSA §5721-A.5</p> <p>“Extraordinary events” include:</p> <p>A. A catastrophic event outside the control of the legislative body such as natural disaster, B. Severe weather, C. Act of God,</p>	<p>4. <u>Exceptions to limitation:</u> 5MRSA §2044.3</p> <p>The following are not included in calculation of expenditure limitation:</p> <p>A. Amounts returned to taxpayers as refunds of excess revenues B. Amounts received from Federal Government C. Amounts collected on behalf of another level of government D. Pension contributions by employees and pension fund earnings E. Pension and disability payments made to former gov’t employees F. Amounts received as gifts, grants or donations that must be spent for specified purposes</p>

	Current Law (Municipalities only)	LD 2075 (Local districts includes municipalities, counties and school units and any other substate governmental entity with the authority to collect revenue)
	<p>D. Act of terrorism, E. Fire, war and riot,</p> <p>“Extraordinary event” does not include a change in economic conditions, revenue shortfall or increase in salaries or benefits. Adjustment is limited to time period necessary to address the extraordinary event.</p> <p>2. Municipality may raise its property tax levy limit by vote at regular or special municipal election called by legislative body. 30-A MRSA §5721-A.6</p>	<p>G. Amounts paid pursuant to a court award; H. Reserve transfers or expenditures</p> <p>2. <u>Exceeding expenditure limitation:</u> 5 MRSA §2044.4 Additional expenditures may be authorized if approved by the same process as for increase in revenue: A. a 2/3 vote of each municipal legislative body And B. approval of a majority of the voters.</p>
Enforcement	<p>5. <u>Enforcement of limitation:</u> 30-A MRSA §5721-A.10 If municipality exceeds limit, the State Tax Assessor may require the municipality to adjust its appropriation downward and impose other penalties provided by the Legislature.</p>	<p>5. <u>Enforcement of limitation:</u> Bill provides no specific sanctions for violating the spending and revenue prohibitions.</p> <p>Statutory limits are binding on legislative bodies other than the Legislature.</p> <p>No specific sanctions provided.</p> <p>Individual or class action lawsuits may be brought to enforce the limits. Successful plaintiffs allowed costs and attorney’s fees. Revenue collected improperly must be return for 4 fiscal years before suit is filed with 10% annual interest. 5 MRSA §2049.2</p>

GOVERNMENT SPENDING/TAX LIMITS

4. COUNTY LIMITS

	Current Law	Initiated Bill
Appropriation limit	<p>1. <u>Statement of limit:</u> 30-A MRSA §706-A.2-3 Appropriations that are funded by and assessment on municipalities may not exceed the “assessment limit.”</p> <p>The assessment limit equals the assessment limit for the previous year multiplied by one plus:</p> <p style="padding-left: 40px;">the income growth factor plus the property growth factor.</p> <p>When the state and local tax burden is in the top 1/3 of all states, the income growth factor is the average real personal income growth rate but no more than 2.75%.</p> <p>When the state and local tax burden is in the middle 1/3 of all states, the income growth factor is the average real personal income growth plus forecasted inflation.</p>	SAME AS MUNICIPALITIES
Factors in formula	<p>2. <u>Definition of factors:</u> 30-A MRSA §706-A.1 When the state and local tax burden is in the top 1/3 of all states, the “</p> <p style="padding-left: 40px;"><u>“Average real personal income growth” means the average percent change in personal income in the State for the prior 10 years less CPI.</u></p> <p style="padding-left: 40px;">The “<u>property growth factor</u>” equals the total increase in assessed value of property first subject to taxation in the prior year for each municipality in the county, etc divided by the total valuation of the municipalities in the county.</p>	
Adjustments to limitation	<p>3. <u>Adjustments to limitation:</u> 30-A MRSA §706-A.2.A A. County may request adjustment from State Tax Assessor if prior year’s tax commitment reflects “extraordinary, nonrecurring events” (undefined).</p>	

	Current Law	Initiated Bill
	<p>B. County must lower its assessment limit by amount of net new state funding other than mandates funding) 30-A MRSA §706-A.4</p> <p>“Net new funding means: the amount received from state for services funded by the assessment less the amount received in the prior year multiplied by (one plus the income growth factor plus property growth factor)</p>	
Exceptions to limitation	<p>4. <u>Exceptions to limitation:</u> 30-A MRSA §706-A.5 By vote of county governing body, the assessment limit may be exceeded as necessary to comply with a court order or to respond to an extraordinary event. “Extraordinary events” include: A. A catastrophic event outside the control of the county commissioners such as natural disaster, B. Severe weather, C. Act of God, D. Act of terrorism, E. Fire, war and riot, “Extraordinary event” does not include a change in economic conditions, revenue shortfall or increase in salaries or benefits. Adjustment is limited to time period necessary to address the extraordinary event.</p> <p>2. County may raise its assessment limit by vote on written referendum at regular or special election called by majority of county commissioners. 30-A MRSA §706-A.6</p>	
Enforcement	<p>5. <u>Enforcement of limitation:</u> 30-A MRSA §706-A.9 If county exceeds limit, the State Tax Assessor may require the county to adjust its appropriation downward and impose other penalties provided by the Legislature.</p>	

5. REVENUE INCREASE APPROVAL

	Current law	Initiated Bill (applies to all levels of governments)
Limit on increase	<p>State level: No limit</p> <p>Municipal and County level: Inherent in spending limitation (See above)</p>	<p>1. <u>General requirement:</u> 5 MRSA §2043.1 Any increase in revenue must be approved by: A. 2/3 vote of legislative body Plus B. Approval of voters</p> <p>2. <u>Motor fuels tax indexing</u> 36 MRSA §3321.5 Annual rate increase due to indexing may not take effect unless approved by the voters</p>
Definitions		<p>An <u>increase in revenue</u> means a measure that: 5 MRSA §2042.2</p> <p>A. Enacts a new tax or fess B. Increases the rate or expands the base of a tax or fee C. Reduces eligibility under BETR without providing a 100% property tax exemption D. Repeals or reduces a tax exemption, credit or refund E. Extends an expiring tax or fee increase</p>
Exceptions		<p>Voter approval not required for: 5 MRSA §2043.2</p> <p>A. If revenue is less than payments on general obligation bonds, pensions and court judgments B. The measure is an emergency tax (approved as emergency for specified period of time by 2/3 vote of legislative body and must be subsequently approved by voters) C. The increase applies to a quasimunicipal agency without a body of voters</p>
Voter approval process		<p><u>Referendum required</u> 5 MRSA §2043.3 At general or special election for approval by voters</p> <p><u>Notice:</u> 5 MRSA §2043.5 30 days before election notice must be sent to all registered voters containing:</p> <ol style="list-style-type: none"> 1. Election timing information 2. For each proposed revenue increase, spending for current year and each of 4 prior years 3. Estimate of first full year of revenue increase and spending without the increase 4. Two summaries up to 500 words, one for the proposal, one against the proposal

	Current law	Initiated Bill (applies to all levels of governments)
Costs		State must reimburse municipalities for cost of: <ol style="list-style-type: none"> 1. Each statewide election, and 2. one local district election annually.
Enforcement		<p>Statutory limits are not binding on the Legislature.</p> <p>Statutory limits are binding on other legislative bodies.</p> <p>No specific sanctions provided.</p> <p>Individual or class action lawsuits may be brought to enforce the limits. Successful plaintiffs allowed costs and attorney's fees. Revenue collected improperly must be returned for 4 fiscal years before suit is filed with 10% annual interest.</p> <p>5 MRSA §2044.2</p>

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